LIBRARY
SUPREME COURT, U. S.

FILED
MAY 9 1969
JOHN F. DAVIS, CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 40

JAMES CONWAY,

Petitioner,

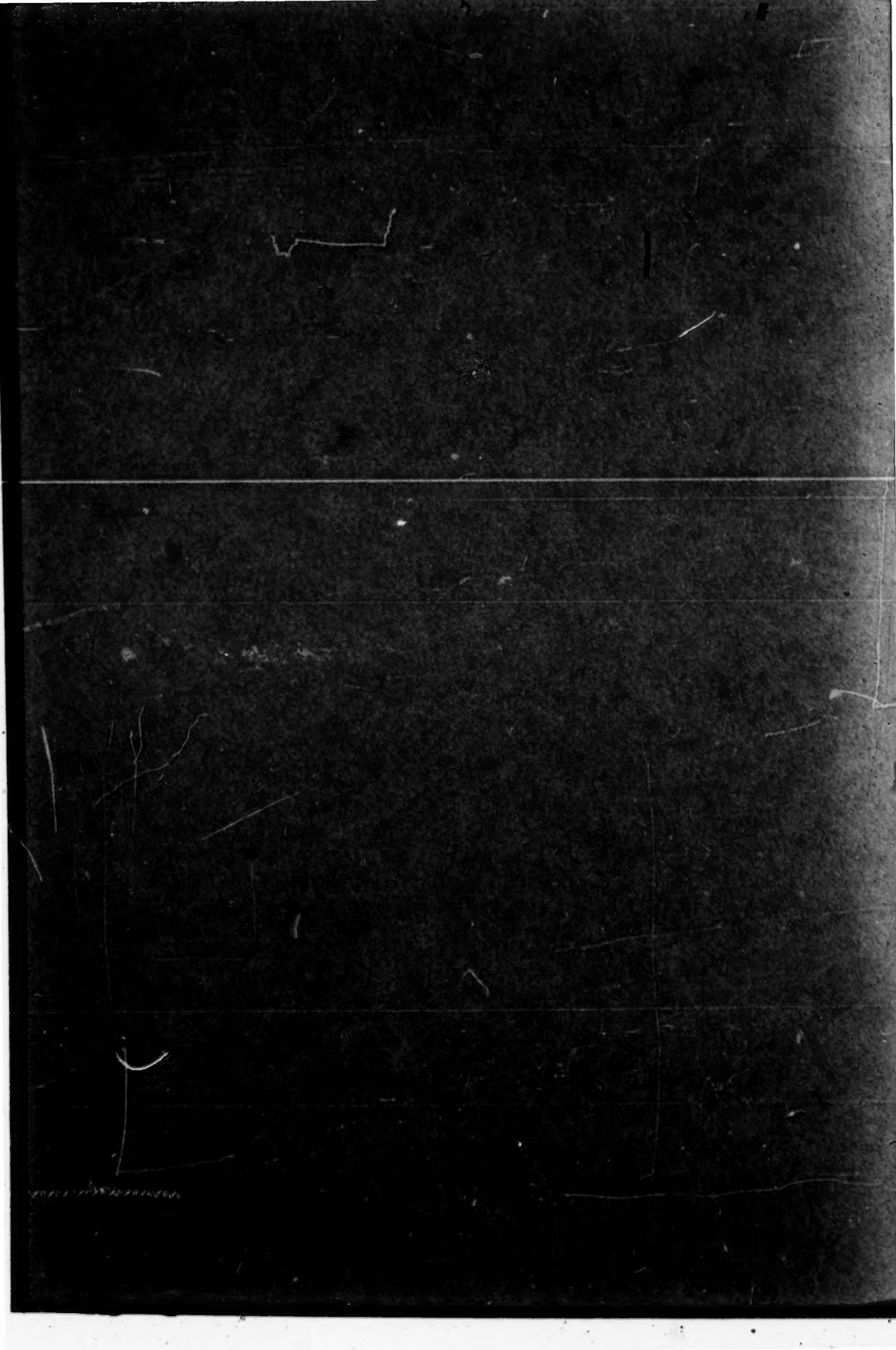
—v.—

CALIFORNIA ADULT AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 6, 1968

CERTIORARI GRANTED JANUARY 27, 1969



Supreme Court of the United States

OCTOBER TERM, 1968

No. 974

JAMES CONWAY,

Petitioner,

—v.—

CALIFORNIA ADULT AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Record from the United States District Court for the Northern District of California	
Docket Entries	1
Petition for Writ of Habeas Corpus	2
Petition for Writ of Habeas Corpus (excerpts)	8
Order Denying Petition with Leave to Amend	17
Motion for Hearing	18
Order Denying Amended Petition	20
Petition for Certificate of Probable Cause	21
Order Denying Petition	23

	Page
Proceedings in the United States Court of Appeals for the Ninth Circuit	24
Affidavit of James Conway	24
Order of Ninth Circuit Denying Application for Certificate of Probable Cause	27
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	28

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 47725

JAMES CONWAY

v.

CALIF. ADULT AUTHORITY

DOCKET ENTRIES

DATE 1967		FILINGS—PROCEEDINGS
Aug.	25	Petitioner allowed to file his pet. for writ of habeas corpus in forma pauperis. Harris
		1. Petition for writ of habeas corpus.
		2. Order denying petition with leave to amend. Harris Copies to AG and Pet.
Sep.	8	3. Filed petnr's. "Motion for hearing". (File to GBH)
	27	4. Filed order denying appli. for writ of hab. corp. (Harris)
		Copies mailed to petnr. & A.G.
Oct.	10	5. Filed pltfs. petition for certificate of probable cause (File to GBH)
	31	6. Filed order denying petn. for a cert. of prob. cause. (Harris)
		Copies mailed to petnr. & A.G.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

47725

Filed August 25, 1967, James P. Welsh, Clerk

Received August 22, 1967,
Clerk, U. S. District Court, San Francisco

[Title Omitted in Printing]

PETITION FOR WRIT OF HABEAS CORPUS
PERSONS IN STATE CUSTODY

* * * * *

1. Place of detention CALIFORNIA STATE PRISON, REPRESA, CALIF.
2. Name and location of court which imposed sentence SUPERIOR COURT, STATE OF CALIFORNIA, KERN COUNTY
3. The case number (if known) upon which, and the offense or offenses, for which sentence was imposed:
   (a) 6494 and 6498
   (b) .....
   (c) .....
4. The date upon which sentence was imposed and the terms of the sentence:
   (a) MARCH 10, 1952—5 YEARS TO LIFE FOR TWO COUNTS OF ROBBERY,
   (b) CONSECUTIVELY
   (c) .....
5. Check whether a finding of guilty was made:
   (a) after a plea of guilty .....
   (b) after a plea of not guilty NOT GUILTY
   (c) after a plea of nolo contendere .....

6. If you were found guilty after a plea of not guilty, check whether that finding was made by:

   (a) a jury A JURY

   (b) a judge without jury .....

7. Did you appeal from the judgment of conviction or the imposition of sentence: NO.

8. If you answered "yes" to (7), list:

   (a) the name of each court to which you appealed:

   I. .....

   II. .....

   III. .....

   (b) the results in each such court to which you appealed:

   I. .....

   II. .....

   III. .....

   (c) the date of each such result:

   I. .....

   II. .....

   III. .....

   (d) if known, citations of any written opinion or orders entered pursuant to such results:

   I. .....

   II. .....

   III. .....

9. If you answered "no" to (7), state reasons for not so appealing:

   (a) I DID NOT APPEAL BECAUSE I DID NOT KNOW HOW

   (b) .....

   (c) .....

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a) THE INDETERMINATE SENTENCE LAW IS SO VAGUE THAT A PERSON OF ORDINARY INTELLIGENCE CAN NOT UNDERSTAND WHAT IT REQUIRES.

(b) IT IS A VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT FOR THE ADULT AUTHORITY TO REVOKE THE TERMS OF HIS SENTENCE AFTER IT WAS PARTLY SERVED

(c) CALIFORNIA PENAL CODE § 3063 PROHIBITING THE REVOKING OF PAROLES WITHOUT CAUSE, MUST ALSO BE APPLIED IN CASES OF REVOKING TERMS AND PAROLES ALIKE WHEN BOTH ARE DONE WITHOUT CAUSE.

(d) .....

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) THERE WERE THREE INDETERMINATE SENTENCES (SEE ATTACHED POINTS AND AUTHORITIES). AND THE LAST ONE (STATS., 1941, CH. 106) IS NOT THE SAME AS THE ONE OF 1917 WHICH WAS RIGHTLY DECLARED CONSTITUTIONAL.

(b) IT IS DOUBLE PUNISHMENT FOR THE ADULT AUTHORITY TO REVOKE AND INCREASE ANY TERM PARTLY SERVED.

(c) IF CALIFORNIA PENAL CODE § 8063 PROTECTS PRISONERS AGAINST HAVING THEIR PAROLES REVOKED WITHOUT CAUSE: IT IS UNCONSTITUTIONAL FOR IT NOT TO PROTECT AGAINST REVOKING THE TERM ALSO.

12. Prior to this petition have you filed or submitted with respect to this conviction:

(a) Any petition in a State Court for relief from this conviction?

.....

.....

.....

.....

(b) any petition in State or Federal Courts for habeas corpus?

.....

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?
YES

(d) YES

12a. Include, if available, copies of the petitions described in (12).

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

I. PETITION FOR HABEAS CORPUS
II. APPEAL
III. HABEAS CORPUS—HABEAS CORPUS
IV. CERTIORARI—CERTIORARI

(b) the name and location of the court in which each was filed or submitted:

I. SUPERIOR COURT, SOLANO COUNTY, No. 4222
II. DIST. COURT OF APPEAL, FIRST DIST. No. 4437
III. CALIF. SUPREME COURT, NO. 9495-CALIF. SUPREME COURT, NO. 10307
IV. U.S. SUPREME COURT, NO. 1045-U.S. SUPREME COURT, NO. 1036

(c) the disposition thereof:

I. DENIED
II. DISMISSED
III. DENIED—DENIED
IV. DENIED—DENIED

(d) the date of such disposition:

I. MAY 3, 1963
II. SEPTEMBER 18, 1963,
III. NOVEMBER 3, 1965 & OCTOBER 14, 1966,
IV. APRIL OF 1966 & FEBRUARY 13, 1967.

(e) if known, citations of any written opinions or orders entered pursuant to each disposition:

I. NO OPINION
II. DISMISSED PURSUANT TO CAL. PENAL CODE, SEC. 1506
III. NO OPINION—NO OPINION
IV. NO OPINION—NO OPINION

14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application which you have filed? YES

15. If you answered "yes" to (14), identify

(a) which grounds have been previously presented:

I. SEE, NO. 13
II. .....
III. .....

(b) the proceedings in which each ground was raised:

I. .....
II. .....
III. .....

16. If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) .....
(b) .....
(c) .....

17. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? NO
(b) your trial, if any? NO
(c) your sentencing? NO
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented you:

I. .....
.....
II. .....
.....
III. .....
.....

(b) the proceedings at which each such attorney represented you:

I. .....
II. .....
III. .....

19. If you are seeking leave to proceed *in forma pauperis*, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? YES

[Jurat and Affidavit of Poverty Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Title Omitted in Printing]

PETITION FOR WRIT OF HABEAS CORPUS—April 27, 1967

TO: THE HONORABLE PRESIDING JUDGE IN THE ABOVE ENTITLED COURT AND TO THE RESPONDENTS ABOVE NAMED.

GREETINGS:

You will please take notice that JAME CONWAY, the petitioner, complains of the respondents above named and for claim, alleges that: they are holding him in prison contrary to his Constitutional rights; because there were three Indeterminate Sentence Laws between 1917 and 1941; and the present one (1941, Stats. Ch. 106) is so vague and uncertain that it can not be understood by any person of ordinary intelligence.

JURISDICTION

The United States District Court for the Eastern Division of California, may issue writs of habeas corpus; and it is required by statutes to determine when any person within its jurisdiction is deprived of his liberty contrary to the Constitution or Laws of the United States. [28 U.S.C. 2241 (a), (c), (3)].

STATEMENT OF THE CASE

A. *Proceedings In State Courts.*

On March 5, 1952, petitioner was convicted in the Superior Court of Kern County of two counts of first degree robbery in violation of California Penal Code, Section 211; and thereafter, on March 10, 1952, was sentenced to the State Prison for the "term prescribed by law," and it was ordered that the terms of sentence for both conviction be served consecutively with respect to each other.

On March 14, 1952, petitioner was committed to the Adult Authority in the State Penitentiary and he has, ever since that date, been confined in prison and not permitted to go outside of the prison walls either on discharge, or parole, or otherwise.

Approximately eighteen months after petitioner commenced to serve the sentences, he appeared before the Adult Authority (Prison Board) for parole consideration. The Adult Authority denied parole and postponed petitioner for further consideration in one year. And thereafter, petitioner appeared before the Adult Authority each year, and parole was continuouly denied until January of 1959.

On January 29, 1959, petitioner appeared before the Adult Authority for parole consideration, and the Adult Authority did fix petitioner's prison terms at five (5) years each on both counts of the said robbery convictions and each count was to be served consecutively with respect to each other. Parole was denied, and further consideration was postponed to January of 1960; at which time parole was again denied, and petitioner did not thereafter appear before the Adult Authority for parole consideration until June of 1961.

On June 15, 1961, petitioner appeared before the Adult Authority for further parole consideration, and he did discuss parole plans with Mr. Oscar J. Jahnson and Mr. James G. Hutton (Board Members and Representatives, respectively). These gentlemen informed petitioner that the Adult Authority was agreeable to releasing him on parole, but due to the fact that the terms fixed in January 29, 1959, would expire on March 14, 1962, the Adult Authority wished to make a nunc pro tunc order extending petitioner's discharge date beyond March 14, 1962; and the Board Members named above, did urge petitioner to suggest what increase should be made. Petitioner urged that on March 14, 1962, he would have served the 10 years theretofore set by the said Board, and he was entitled to be discharged rather than paroled. And petitioner did not suggest or concent to any increase in his prison term. Nevertheless, the Adult Authority did rescind the action of January 29, 1959, fixing the duration

of petitioner's imprisonment at an aggreate of 10 years. No new duration was fixed by the Adult Authority for the expiration of the said two consecutive sentences, and it was ordered that petitioner appear before the Adult Authority in May of 1962.

On May 28, 1962, the Adult Authority summoned petitioner to appear before them for further parole consideration; but petitioner refused to appear because the terms of 5 years and 5 years consecutively, on both reobbery counts, as fixed on January 29, 1959, had already expired, and the lawful terms of the imprisonment had ended.

On May 3, 1963, petitioner filed an application for a writ of habeas corpus in the Superior Court of the State of California, in and for the County of Solano, entitled: JAMES CONWAY v. CALIFORNIA ADULT AUTHORITY, No. 4222. He alleged that his continued detention was unlawful because he had served and completed one of the two consecutive sentences before the nunc pro tunc order of June 15, 1961. The application was denied without a hearing by the Honorable Thomas N. Healy on May 3, 1963. As a reason for denying the writ, Judge Healy said:

> "No showing of impropriety in determination or redetermination by Adult Authority."

And, upon the County Clerk's own initiative, without a request being made by petitioner, a transcript on appeal was sent to the District Court of Appeal of the State of California, for the First District. This appeal was dismissed without a hearing by the Honorable Justice, Bray of the District Court of Appeals, who said:

> "The appeal herein having been taken from a none-appealable order, the appeal is dismissed on the court's own motion."[2]

A certified copy of the Clerk's Transcript on Appeal (Case No. 4222) with the Order of the Appellate Court (Crim. No. 4437) is marked EXHIBIT "A", attached to the original petition for a Writ of Habeas Corpus herein, and is by reference made a part thereof.

On September 18, 1965, petitioner filed a petition for Writ of Habeas Corpus in the California Supreme Court, entitled JAMES CONWAY v. CALIFORNIA ADULT AUTHORITY, Crim. No. 9495. He urged therein that the Indeterminate Sentence Law is unconstitutional because:

(1) It is an encroachment by the Legislative and Executive branch upon the Judiciary.

(2) It is so vague and uncertain that petitioner can not determine what duration of punishment he had imposed upon him; and the Adult Authority took advantage of its loose definition to coerce petitioner and make him weak and submissive.

Without a hearing, without calling upon respondents to reply, and without giving petitioner an opportunity to prove his claim, the petition was denied by the Supreme Court of the State of California. (A certified copy of this petition is marked EXHIBIT "B", attached to the original petition for a writ of Habeas Corpus herein, and is by referance made a part hereof.)

B. *Proceedings In The Federal Court.*

On December 21, 1965, petitioner filed an application for a Writ of Certiorari to review the California Supreme Court's order of denial in the foregoing habeas corpus action, and to determine the propriety of the California Legislature to enact the Indeterminate sentence law.

In his application for a Writ of Certiorari, petitioner urged that if the Adult Authority were not required to set definite durations of punishment between the maximum and minimum provided by law, and may turn the duration on and off (for any reason whatever) a judgment of imprisonment under provisions of the Indeterminate sentence law is vague and uncertain, and can not servive the Constitutional test for due process of law under the 14th Amentment. (A copy of the application for certiorari, Misc. 1045, is marked EXHIBIT "C", attached to the original petition for Writ of Habeas Corpus, and is by reference made a part hereof).

The United States Supreme Court requested a reply from respondents, which was complied with on March 8, 1966. In response, the Attorney General of California said:

(1) "Since the establishment of the Indterminate Sentence Law in 1917 . . . the maximum term of sentence for first degree robbery has been life." (RSP. 3: 10-13);

(2) ". . . California law neither requires that the Adult Authority in fact fix a term of imprisonment less than the maximum provided for by law, nor does it prohibit the Adult Authority from redetermining or re-fixing a term already set by it. Cal. Pen. Code, §.3020; *Ex Parte McLain*, 55 Cal. 2d 78, 357 P. 2d 1080 (1961), Appeal dismissed, cert. denied, 368 U.S. 10 (1961)." RSP., 4: 7-13;

(3) "Since the Adult Authority has power to set and redetermine sentences within the minimum and maximum limits decreed by law to which the judgment of sentence refers, it may properly refix and thus lengthen a term of imprisonment beyond that originally and necessarily only tentatively fixed. See, *Ex Parte Smith*, 33 Cal. 2d 797, 205 P. 2d 662. (1949)." consecutive sentences may be deemed satisfied until RSP. 4: 14-20:

(4) ". . . Under the law of this state, no one of either the whole of the aggregate term has been served or the maximum term of the initial commitment has expired. See, *In re Cowan*, 27 Cal. 2d 637, 166 P. 2d 279 (1946), cert. denied, 329 U.S. 742 (1946); *In re Byrnes*, 32 Cal. 2d 843, 198 P. 2d 865 (1948); 19 Ops. Cal. Atty. Gen. 23 (1952)." RSP 4: 25-31;

(5) "Since petitioner was properly sentenced to consecutive sentences which in legal effect amounted to separate life terms, the Adult Authority acted within its proper scope when it refixed each of petitioner's terms after the expiration of only seven years." (RSP, 5: 1-5;

(6) and, "California's indeterminate sentence law has been held valid by California Courts in the face of arguments that they were void for uncertainty, *In re Larson*, 44 Cal. 2d 642, 283 P. 2d 1043 (1955), appeal dismissed, 350 U.S. 928 (1956); that they unlawfully conferred the power of courts upon the Adult Authority, *People* v. *Leiva*, 134 Cal. App. 2d 100, 103, 285 P. 2d 46, 49 (1955); *People* v. *Kostal*, 159 Cal. App. 2d 444, 451-53, 323 P. 2d 1020, 1025-26; and that they violated due process and the equal protection clauses of the Federal Constitution. *Fleischer* v. *Adult Authority*, 202 Cal. App. 2d Cal. App. 2d 44, 20 Cal. Reptr. 603 (1962); *People* v. *Kostal*, 150 Cal. App. 2d 444, 323 P.2d 1020 (1958). Contentions similar to those made by petitioner here have been rejected upon the recognition that the questions raised were purely of a local nature involving the interpretation of a state sentencing statute and consequently not a federal question. See, *In re Costello*, 262 f. 2d 214 (9th Cir., 1959). Moreover, Indeterminate Sentence Laws similar to California's have been recognized as valid by this Court. *Wreyer* v. *Illinois*, 187 U.S. 71 (1902); *Ughbanks* v. *Armstrong*, 208 U.S. 481 (1908)"

Petitioner replied to these contentions on March 10, 1966, and April 27, 1966, but to no avail. The United States Supreme Court denied certiorari without a hearing on May 16, 1966.

C. *Proceedings in State Court*

On August 31, 1966, petitioner filed a new petition for a writ of habeas corpus in the California Supreme Court. He urged therein that he is unlawfully restrained of his liberty because:

(1) "The Adult Authority rescinded the order of January 29, 1959 (fixing the terms at 10 years) for no cause". (Tr. of R. No. 10). Without a hearing, without calling upon respondents to reply, and without giving petitioner an opportunity to prove his claim, the petition was denied

by the Supreme Court of California. (A certified copy of this petition for writ of habeas corpus, and other denying the writ, and notice of appeal is marked "EXHIBIT D", attached to the original petition for writ of habeas corpus herein, and is by reference made a part hereof.)

D. *Proceedings in Federal Court*

On November 28, 1966, petitioner filed an application for a writ of certiorari in the Supreme Court of the United Stated to review the order of the California Supreme Court, denying the foregoing petition for writ of habeas corpus. He urged in this application that he was denied due process and equal protection of the laws by the California Supreme Court's denial of his petition for writ of habeas corpus because the acts he stated were the same as had theretofore been tendered to the California Third Appellate Court and the California Supreme Court by other prisoners, and it was in each case adjudicated that the Adult Authority are bound by section 3063 of the California Penal Code, prohibiting the suspension or revocation of paroles without legal cause.

The United States Supreme Court did not call upon respondents to reply; and certiorari was denied without a hearing on February 13, 1967.

Footnotes:

[1] It should be noted that the California Adult Authority have been accused of coercing each prisoner comming before them to plead guilty as a condition to getting a parole or discharge before expiration of the maximum sentence provided by law for the offense which he is imprisoned.

The instent petitioner of course, was convicted by a jury, and after going to San Quentin prison and appearing before the Adult Authority at least 5 times (from 1953 to 1958), petitioner continuously denied guilt. And because petitioner had observed closely and knew of several prisoners with natural life sentences, and several others with sentences of from 5 years to life or less, who had pleaded guilty and been discharged or paroled; when petitioner appeared before the Adult Authority for consideration in 1959, he pleaded guilty in the presenec of the the Adult Authority, and they actually did set petitioner's sentence at 5 years each for the two robbery convictions, but denied parole.

However, when petitioner appeared before the Adult Authority in 1961, and was asked by Mr. Oscar J. Jahnson, where petitioner

would go if released on discharge, and petitioner replied: "To Bakersfield." Mr. Jahnson said: "But that is where you got into this trouble. What are you planning to do there?" Petitioner replied: "I'm going to fight my case."

Mr. James G. Hutton then asked: "Didn't you tell us before that you were guilty of these crimes?" Petitioner said: "No." And it was then and only then that any intention to increase petitioner's prison term was mentioned. Mr. Jahnson said: "You have enough time in, but we've got to be sure that you stay out of trouble, so we are going to consider you for parole." Petitioner said: "I will appreciate that." Mr. Jahnson said: "How much parole do you think would be fair, James?" (Talking to petitioner). Petitioner said: "You set my time at 10 years, and I only have about 8 months left. I will do that." Mr. Jahnson said: "We know we set 10 years in 1959, but that was then. What we want to do now is add some to that and release you on parole. We think you need some supervision on parole." Petitioner said: "Well, Sir, on March 14, 1962, I will have served the 10 years that was given me in January of 1959, and I will be entitled to a discharge then and not a parole. But if you will let me, I will like to go out on parole until then."

It should be noted also that on June 10, 1961, petitioner appeared before the Adult Authority for consideration on a regular yearly schedual for parole consideration, and not for disciplinary action. And furthermore, it should be noted that in June of 1961, petitioner had completed at least 1 year without an infraction of prison rules being filed against him. This has to be so because petitioner was at that time an "honor prisoner" living in San Quentin's West Block, which is an "honor unit" where it is required that every prisoner living therein must have 1 year with absolutely no violations of prison rules. Yet, the Adult Authority rescinded petitioner's 10 year prison sentence. And obviously, the only reason for this action was to coerce petitioner to plead guilty and not challenge his conviction after being released on discharge.

[2] Section 1506 of the California Penal Code provides that no appeal lyes from an order of a superior court denying a petition for Writ of habeas Courpus.

QUESTIONS PRESENTED

1. If the Superior Courts of the State of California were not authorized to impose a sentence in term of years and were required to commit petitioner to the California Adult Authority for "The term prescribed by law", and the Adult Authority were not required by any statutory law to determine and fix a specific duration of imprisonment between the maximum and minimum provided by

law, except at their own will and caprice, can the commitment survive the constitutional test for due process of law under the 14th Amendment to the Constitution of the United States on ground that the sentence is vague and uncertain?

2. If, under California law, when a prisoner is serving two indeterminate sentences of imprisonment to be served consecutively, as the instant petitioner, and the law specifacilly provides that the Board may fix the term and duration of all other consecutive sentences "after the expiration of the first sentence", the prisoner had served 7 years, 9 months and 15 days for two counts of first degree robbery, when the Board fixes the sentences for both counts of robbery at 5 years each, did the term of the first sentence terminate after the first 5 years of imprisonment? Did the additional 2 years, 9 months and 15 days count as time served on the second term? Could the Board re-open the first sentence if it had terminated? Could the Board increase the term of imprisonment for the second consecutive sentence on June 15, 1961, (after 9 years and 4 months of continuous servitude as a result of the 2 robbery convictions?

3. If the Legislature enacted Section 3063 which specifically prohibited the Board to revoke a parole without cause, was it violation to due process of law under the 14th Amendment for it to revoke the whole term for no cause?

• • • • •

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 47725

Filed August 25, 1967, James P. Welsh, Clerk

JAMES CONWAY, PETITIONER

v.

CALIFORNIA ADULT AUTHORITY, RESPONDENT

ORDER DENYING PETITION WITH LEAVE TO AMEND—
August 24, 1967

Upon reading the affidavit of James Conway, in forma pauperis, IT IS ORDERED that said petitioner be and is hereby allowed to file his petition for writ of habeas corpus, without prepayment of fees.

This petition for writ of habeas corpus fails to comport with established requirements in that an improper party is named as respondent; a brief, concise statement of the pertinent facts is absent; and there is lacking any indication that a copy of petitioner's voluminous 76 page brief has been served upon the California State Attorney General.

Accordingly, these proceedings are hereby dismissed, with leave to amend to correct the hereinabove noted deficiencies.

DATED: AUGUST 24, 1967.

/s/ George B. Harris
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Title Omitted in Printing]

MOTION FOR HEARING—Filed September 8, 1967

TO: THE HONORABLE PRESIDING JUDGE IN THE ABOVE ENTITLED COURT.

James Conway respectfully moves this Honorable Court for a hearing in the instant case without amending the original petition or any part thereof filed in this Honorable Court on August 25, 1967.

JURISDICTION

This motion is made on ground that after reading the petition for writ of habeas corpus and the 76 page supplemental brief, this Court said the following:

> "This petition for writ of habeas corpus fails to compart with the established requirements in that an improper party is named as respondent; a brief concise statement of the pertinent facts is absent; and there is lacking any indication that a copy of petitioner's voluminous 76 page brief has been served upon the California State Attorney General.
>
> "Accordingly, these proceedings are hereby dismissed, with leave to amend to correct the herein above deficiencies."

The jurisdiction of this Court is invoked under sections 1915(a) and 2241(a), (c), (3) of Title 28 U.S.C.A.

STATEMENT OF FACTS

It is conceeded that another party (Raymond L. Procunier) is holding petitioner in a State prison, and even though such detention is on the order of the Adult Authority, any order respecting this detention should preferably be addressed to Raymond L. Procunier rather than to the Adult Authority. This conceeded, petitioner has

filed herewith a companion application to summon Raymond L. Procunier as an additional party respondent.

With respect to the next ground held by the Court that petitioner failed (as required by Rule 8(a) of the Federal Rules of Civil Procedure) to file a brief concise statement, etc., petitioner respectfully contends that the said 76 page brief was only a supplement to explain questions ten and eleven on the required "Federal Form" (which may not have been received by this Court). However, if the "form" was received, the statement therein appear to be sufficiently "short and plain" to satisfy the requirement stated in Rule 8(a) of the Federal Rule of Civil Procedure.

With respect to the next ground held by the Court that there was no indication that a copy of petitioner's voluminous 76 page brief has been served upon the California State Attorney General, petitioner respectfully submitts that the affidavit of service by mail attached to the "Federal Form" intended for this Court was intended to aver that both documents had been served on all parties concerned. However, petitioner will contact the Attorney General immediately to determine whether these documents were received through the mails.

With respect to the last order of the Court that the proceedings are dismissed with leave to amend to correct the hereinabove noted deficiencies, petitioner respectfully submitts that he is a layman and not a lawyer. Petitioner can see no way of shortening the 76 page brief without destroying the contents thereof.

Therefore, petitioner prays that this Court grant a hearing inspite of the remaining deficiencies therein. The Fourth Circuit Court, in a layman's petition, held:

> "Where the layman's paper clearly shows what he is driving at, it is usually in the interest of justice, and may in the long run save time to temper the reading of the papers with a measure of tolerance." See UNITED STATES v. GLASS, 317 F2d 200 at 202; PYLE v. KANSAS, 317 U.S. 213 at 216.

Dated September 4, 1967.

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 47725

Filed Sep. 27, 1967, James P. Welsh, Clerk

JAMES CONWAY, PETITIONER

vs.

CALIFORNIA ADULT AUTHORITY and
RAYMOND L. PROCUNIER, RESPONDENTS

ORDER DENYING AMENDED PETITION—September 27, 1967

Pursuant to leave of court granted on August 24, 1967, petitioner has filed an amended petition for writ of habeas corpus wherein he attacks the constitutionality of the California Indeterminate Sentence laws and the power of the California Adult Authority to refix his sentence within the maximum provided by law.

As the Circuit Court stated in Collins v. Klinger, 332 F. 2d 54, 58 (9th Cir. 1964), "Since these are not federal questions, they may not be considered in a federal habeas corpus proceeding. . ." (Authorities Omitted)

Accordingly, this application for writ of habeas corpus must be and is hereby DENIED.

DATED: SEPTEMBER 27, 1967.

/s/ G. B. Harris
United States District Judge

9-27-67 Copies mailed petnr & A. G.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Title Omitted in Printing]

PETITION FOR CERTIFICATE OF PROBABLE CAUSE—
Filed October 10, 1967

TO: The Honorable Presiding Judge Of The Above Entitled Court.

Comes now, James Conway, the petitioner in the above entitled case, and presents a petition for Certificate of probable cause and consideration under the provisions of Title 28 U.S.C. §§., 2253 and 1915, so that petitioner may proceed to appeal his cause to the Court of Appeals.

The petition for a writ of hsbeas corpus in this case was denied September 27, 1967 (See Civil Number 47725) a copy of that order is attached hereto and made a part hereof, and the order denying the petition is believed to be error.

Petitioner further believes that this cause of action is taken in good faith and is not frivolous—for, petitioner honestly believes that he is being held illegally and in violation of his constitutionally protected rights of due process and equal protection of the laws.

Petitioner believes that the adverse order denying his petition has been based on conflicting circuit court opinions and opinions inconsistant with applicable decisions of the United States Supreme Court.

REASONS RELIED ON FOR GRANTING THE APPEAL

The Circuit Court opinion in COLLINS v. KLINGER, 332 F2d 54, that petitioner's contention that he is being detained in prison under and by virtue of an unconstitutional law, does not state a federal question, is inconsistant with the opinion of the United States Supreme Court in *In re* STANFORD & TOOL CO., 160 U.S. 247, 255-256, in that it does not tell what issues have been laid to rest by the mandate of the Ninth Circuit Court.

If the Circuit Court opinion intends to hold that a contention that the sentence under the indeterminate sentence law is vague and uncertain does not raise a constitutional issue, such contention is contrary to the United States Supreme Court in HILL v. WHAMPLER, 298 U.S. 460, 463 and cases cited there. And, if it intended to hold that a contention based upon the *separation of powers* does not state a federal issue, such would be inconsistant with the order of the Ninth Circuit Court in APPLICATION OF GORDON, 157 F.2d 659; or if the Court intended to hold that an allegation that the penal statute under which petitioner is detained is unconstitutional for other reasons than those above, the opinion would be contrary to the United States Supreme Court in *Ex parte* SIEBOLD, 100 U. S. 371, 376-377.

For reasons that the Circuit Court opinion in COLLINS v. KLINGER, supra., is vague and uncertain, and inconsistant with the United States Supreme Court, petitioner believes be is entitled to a certificate of probable cause to iron out the inconsistancies therein on appeal.

Dated October 5, 1967.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/ James Conway
JAMES CONWAY

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 47725

JAMES CONWAY, PETITIONER

vs.

CALIFORNIA ADULT AUTHORITY and
RAYMOND L. PROCUNEER, RESPONDENTS

ORDER DENYING PETITION—October 31, 1967

Petitioner's application for writ of habeas corpus was denied by this Court on September 27, 1967. He now presents a petition for certificate of probable cause to appeal under 28 U.S.C. § 2253.

The original petition attacked the constitutionality of the California Indeterminate Sentence laws and the power of the California Adult Authority to refix his sentence within the maximum provided by law. These issues have been consistently held to involve no federal question.

Accordingly, this petition for a certificate of probable cause must be and hereby is DENIED.

DATED: OCTOBER 31, 1967.

GEORGE B. HARRIS
United States District Judge

Collius v. *Klinger, 332 F. 54*
In re Castro, 226 F.2d 214

47725

Received Dec. 14, 1967, Wm. B. Luck, Clerk

JAMES CONWAY
Box No. A-20630
Tamal, California

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

3788

JAMES CONWAY, PETITIONER

vs.

UNITED STATES DISTRICT COURT, RESPONDENT
CALIFORNIA ADULT AUTHORITY, ET AL.,
REAL PARTIES IN INTEREST

AFFIDAVIT OF JAMES CONWAY

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

I, James Conway, the petitioner above named, being first duly sworn according to law, deposes and says:

That on or about October 31, 1967 the United States District Court for the Northern District of California, granted permission for petitioner to file a petition for writ of habeas corpus therein entitled *James Conway* v. *California Adult Authority, et al.*, No. 47725, in forma pauperis; and denied the same on ground that the issues alleged therein do not consist of federal grounds; that on November 17, 1967, petitioner filed a timely application for appeal to this Court along with the $5.00 filing fee payed for by Woodrow Williams, A-80533 (a fellow prisoner); but the Clerk of the United States District Court below, refused to accept the filing fee, and petitioner

sought to file herein a petition for writ of mandate along with the affidavit and draft of Woodrow Williams authorizing and requesting the Warden of San Quentin Prison to pay the said $5.00 filing fee out of the "Trust Account" of said Woodrow Williams; but the Warden of San Quentin Prison has caused, permitted, or allowed his deputies, agents, servants, and/or officers to refuse to mail the writ of mandate to this Court; that after having had the said petition for writ of mandate and attachments returned to petitioner's cell on December 8, 1967, petitioner was put in "Isolation" and deprived of all of his legal papers, pencils and notes, all because petitioner refused to accept the returned petition for writ of mandate; that upon refusal of petitioner to accept the said returned petition from prison guard ..... DeLEON, said prison guard then and there threw the said petition upon the floor where it was probably later swept up by the prison janators and burned; that petitioner has no way of knowing how long the Warden of San Quentin prison will continue to keep in Isolation, away from his legal writs, papers and notes (especially petitioner's copy of the same mandate and attachments), nor has petitioner any way of knowing whether the Warden will continue to refuse to mail the said mandate to this Honorable Court until until after petitioner's action in the Court below is lost by techniqualities based upon defaults out of petitioner's control.

That the prison authorities have no legal right or authority to deny petitioner the due access of this Court with the said petition for writ of mandate and attachments, because they do not agree with the contents thereof. See *Ex parte Hull*, 312 U.S. 546. And therefore, this Honorable Court should retain jurisdiction of the matters involved herein until the said petition for mandate with attachments be received, considered and determined by this Honorable Court in accordance with *Ex parte Hull*, supra.

THEREFORE, petitioner petitioner prays that this Court shall hold this affidavit as a memorandum to show that the only reason why appeal in *Conway* v. *California Adult Authority*, No. 47725 has not been perfected in

this Court, is that the United States District Court refused to accept the filing fee tendered by petitioner on November 17, 1967; and the prison officials has so far (upon exhibition of this affidavit) refused to allow petitioner to to file a petition for mandate in this Honorable Court.

Dated: December 10, 1967.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted

/s/ James Conway
JAMES CONWAY

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Misc. 3788

JAMES CONWAY, PETITIONER

vs.

CALIFORNIA ADULT AUTHORITY and RAYMOND L. PROCUNEER, RESPONDENTS

ORDER DENYING APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

Petitioner has submitted an affidavit to the effect that he has been frustrated in his efforts to appeal from adverse orders of the district court entered on September 27, 1967, denying a petition for a writ of habeas corpus and on October 31, 1967, denying an application for a certificate of probable cause.

Treating the affidavit as an application to me for a certificate of probable cause it is denied for the reasons expressed by Judge Harris in the above orders.

/s/ RICHARD H. CHAMBERS
United States Circuit Judge

Filed Feb. 7, 1968, Wm. B. Luck, Clerk

SUPREME COURT OF THE UNITED STATES

No. 211 Misc., October Term, 1968

JAMES CONWAY, PETITIONER

v.

CALIFORNIA ADULT AUTHORITY, ET AL.

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—January 27, 1969

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 974 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1969 O—339000